



CMA(MD)No.161 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

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THE HONOURABLE MRS.JUSTICE N. MALA

**CMA(MD).No. 161 of 2023 and
CMP(MD).No.1573 of 2023**

M/s. Reliance General Insurance Company Limited,
Through its General Manager,
2nd Floor, 2nd Avenue,
Rayals Towers Plot No.2054,
Near Senthil Nursing Home,
Anna Nagar, Chennai. ... Appellant/ 2nd respondent

vs.

1.Kalaiselvi
2.Minor Nalini
3.Minor Bavikaran
(Minor respondents 2 and 3 are
rep. through their next friend
guardian and mother the first respondent)
4.Samydurai
5.Krishnaveni ... Respondents 1 to 5 / petitioners
6. A.Kannammal ... 6th respondent / 1st respondent

PRAYER:- This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the Judgment and Decree passed by the Motor Accidents Claims Tribunal / Subordinate Judge, Pattukkottai made in MCOP.No.300 of 2010, dated 22.01.2016.



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For Appellant : Mr.V.Sakthivel

For 1st respondent : Mr. S. Deenadhayalan

JUDGMENT

The appellant / Insurance Company has filed the present appeal challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Subordinate Judge, Pattukkottai in MCOP.No.300 of 2010, dated 22.01.2016.

2. The summary of the facts are as follows:

On 30.06.2010 the deceased after seeing off his uncle at the Chennai Airport was walking on the service road. At that time the Tata Sumo van belonging to the 1st respondent and insured with second respondent which was driven by its driver rashly and negligently, hit the deceased due to which he sustained grievous injuries and later succumbed to the same. The claimants therefore filed a claim petition claiming a sum of Rs.50,00,000/- as compensation.

3.Both the insurer as well as the Insurance Company, who were arrayed as respondents 1 and 2 filed counter denying the averments raised



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in the claim petition. The second respondent in its counter stated that the driver of the first respondent was not negligent and that the burden lay on the claimants to prove that the negligence of the driver resulted in the accident. According to the second respondent, the deceased was negligent as he crossed the road without following the basic traffic rules. The second respondent denied the income of the deceased and further submitted that the claim was exorbitant.

4. The claims Tribunal on an assessment of the entire evidence on record returned the finding of the negligence against the driver of the first respondent and mulcted liability on the second respondent who was the insurer of the first respondent. On the quantum of compensation the Tribunal considering the fact that the deceased was employed as a driver in UAE prior to his death and on the basis of the evidence on record awarded a total sum of Rs.23,15,000/-. Aggrieved by the Judgment and decree of the tribunal the appellant / Insurance Company has filed the present appeal.

5. The only issue raised by the appellant in the appeal is the quantum of compensation awarded by the tribunal.



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6. The learned counsel appearing for the appellant / Insurance Company submitted that the Tribunal was not right in taking the notional income at Rs.15,000/- per month because at the time of accident the deceased was un-employed for he returned from UAE in the year 2009 itself. The learned counsel therefore submitted that the quantum of compensation awarded by the Tribunal was unsustainable.

7. On the other hand, the learned counsel appearing for the respondents / claimants submitted that the deceased was holding an international driving licence, that the salary certificate issued to him by his employer Alrawabi Trading Company showing his salary as Rs.60,000/- per month and the Bank Passbook of the 5th respondent, mother of the deceased, were enough to prove that the deceased was earning substantial income.

8. I have heard the learned counsel appearing for both sides and have gone through the materials placed before me.

9. I find that the Tribunal has adopted the notional income of the deceased at Rs.15,000/- per month, after considering the documents filed



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under Ex.A7 - Passport of the deceased, Ex.A8 - the health Card issued by the Ministry of Health UAE, Ex.A9 - the Salary Certificate issued by the employer of the deceased, Ex. A10 driving licence of the deceased, Ex.A11 international driving licence of the deceased and Ex.A12 Bank statement of the deceased's mother i.e., 5th respondent in the appeal.

10. Considering the entire documents and materials available on record, I am of the view that the income fixed by the Tribunal at Rs. 15,000/- per month is reasonable just and fair and hence, it does not call for interference by this Court.

11. In the light of the above, the Civil Miscellaneous Appeal is dismissed by confirming the Award, dated 22.01.2016, made in M.C.O.P.No.300 of 2010, on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Pattukottai. The appellant / Insurance Company is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made by the respondents 1 to 5 / claimants are entitled to their shares in the proportion directed by the Tribunal. The respondents



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1, 4 and 5 are permitted to withdraw their shares on filing necessary application before the Tribunal. Since the respondents 2 and 3 are minors their shares shall be deposited in any one of the Nationalized Banks till they attain majority. The first respondent, mother of the minor respondents 2 and 3 is permitted to withdraw the accrued interest for the up keep of the minors once in three months directly from the Bank. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
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To

The Principal District Judge, Thoothukudi.



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N. MALA, J.,

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